

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MASON TENDERS DISTRICT  
COUNCIL WELFARE FUND, PENSION  
FUND, ANNUITY FUND, and  
TRAINING PROGRAM FUND, and JOHN  
J. VIRGA, in his capacity as Director,

Plaintiffs,

-against-

HORIZON GROUP OF NEW ENGLAND,  
INC., and TRAVELERS CASUALTY  
AND SURETY COMPANY OF  
AMERICA,

Defendants.

**Index No.: 07-cv-3770**

**ANSWER and AFFIRMATIVE  
DEFENSES**

Defendant, Travelers Casualty and Surety Company of America (“Defendant” or “Travelers”) by their attorneys Dreifuss Bonacci & Parker, LLP as and for their answer, herein alleges:

**NATURE OF ACTION AND JURISDICTION**

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint.

**PARTIES**

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph of the Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. Defendant admits the allegations contained in Paragraph 8 of the Complaint.

**AS AND FOR A FIRST CLAIM FOR RELIEF**

(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

9. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 8 hereof.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

11. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.

**AS AND FOR A SECOND CLAIM OF RELIEF**  
(PLAINTIFF'S CLAIM AGAINST TRAVELERS)

16. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 15 hereof.

17. Defendant admits the allegations contained in Paragraph 17 of the Complaint in that Horizon Group posted a bond and begs leave to refer to the original Bond at the trial of this action for all the terms, conditions, and limitations set forth therein.

18. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.

19. Defendant neither admits nor denies the allegations contained in Paragraph 19 of the Complaint in that it calls for a legal conclusion and begs leave to refer to the original Bond at the trial of this action for its true terms, conditions and legal effects.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

23. Defendant neither admits nor denies the allegations contained in Paragraph 23 of the Complaint in that it calls for a legal conclusion and begs leave to

refer to the original Bond at the trial of this action for its true terms, conditions and legal effects.

24. Defendant denies the truth of the allegations contained in Paragraph 24 of the Complaint.

**AS AND FOR A THIRD CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

25 Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 24 hereof.

26 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint.

27 Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint.

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint.

**AS AND FOR A FOURTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF ERISA OBLIGATIONS BY  
DEFENDANT HORIZON GROUP)

31. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 30 hereof.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint.

**AS AND FOR A FIFTH CLAIM FOR RELIEF**  
(PLAINTIFF'S FUNDS DEMAND FOR AN ORDER DIRECTING  
DEFENDANT HORIZON GROUP TO PERMIT AN AUDIT OF ITS BOOKS  
AND RECORDS)

36. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 35 hereof.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint.

**AS AND FOR A SIXTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

39. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 38 hereof.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40 of the Complaint.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 of the Complaint.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint.

**AS AND FOR A SEVENTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM AGAINST DEFENDANT TRAVELERS)

44. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 43 hereof.

45. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 of the Complaint.

46. Defendant neither admits nor denies the allegations contained in Paragraph 46 of the Complaint as it calls for a legal conclusion and begs leave to refer to the original bond at the trial of this action for its true terms, conditions and legal effects.

47. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint.

48. Defendant neither admits nor denies the allegations contained in Paragraph 46 of the Complaint as it calls for a legal conclusion and Defendant leaves Plaintiffs to their proofs.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint.

50. Defendant neither admits nor denies the allegations contained in Paragraph 50 of the Complaint as it calls for a legal conclusion and Defendant leaves Plaintiff to their proofs.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 of the Complaint.

**AS AND FOR AN EIGHTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

52. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 51 hereof.

53. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint.

54. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Complaint.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Complaint.

**AS AND FOR AN NINTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

57. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 56 hereof.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint.

59. Defendant denies knowledge or information sufficient to form as to the truth of the allegations contained in Paragraph 59 of the Complaint.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 of the Complaint.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 of the Complaint.

**AS AND FOR A TENTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM AGAISNT DEFENDANT TRAVELERS)

62. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 61 hereof.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint.

64. Defendant neither admits nor denies the allegations contained in Paragraph 64 of the Complaint as it calls for a legal conclusion and begs leave to refer to the original bond at the trial of this action for its true terms, conditions and legal effects.

65. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint.

66. Defendant neither admits nor denies the allegations contained in Paragraph 66 of the Complaint as it calls for a legal conclusion and Defendant leaves Plaintiffs to their proofs.

67. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint.



68. Defendant neither admits nor denies the allegations contained in Paragraph 46 of the Complaint as it calls for a legal conclusion and Defendant leaves Plaintiffs to their proofs.

69. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69 of the Complaint.

**AS AND FOR AN ELEVENTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY DEFENDANT  
HORIZON GROUP)

70. Defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 69 hereof.

71. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 of the Complaint.

72. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 72 of the Complaint.

73. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 of the Complaint.

74. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 of the Complaint.

**AS AND FOR A TWELFTH CLAIM FOR RELIEF**  
(PLAINTIFF'S CLAIM FOR COSTS OF AN AUDIT AGAINST  
DEFENDANT HORIZON GROUP)

75. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 74 hereof.

76. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint.

77. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint.

78. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint.

79. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint.

**AS AND FOR A THIRTEENTH CLAIM FOR RELIEF**

(PLAINTIFF'S CLAIM FOR BREACH OF CONTRACT BY  
DEFENDANT HORIZON GROUP)

80. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 79 hereof.

81. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint.

82. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 84 of the Complaint.

83. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 of the Complaint.

84. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 of the Complaint.

85. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint.

86. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint.

**AS AND FOR A FOURTEENTH CLAIM FOR RELIEF**

(PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF AGAINST  
DEFENDANT HORIZON GROUP)

87. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 86 hereof.

88. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 of the Complaint.

89. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 of the Complaint.

90. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 92 of the Complaint.

91. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 of the Complaint.

92. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 94 of the Complaint.

93. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 95 of the Complaint.

**AS AND FOR A FOURTEENTH CLAIM FOR RELIEF**

(PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF PURSUANT TO  
ERISA AGAINST DEFENDANT HORIZON GROUP)

94. Defendant repeats and realleges its responses to the allegations set forth in Paragraphs 1 through 93 hereof.

95. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 97 of the Complaint.

96. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 98 of the Complaint.

97. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint.

98. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 of the Complaint.

99. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

100. The Plaintiffs' Complaint fails to state a claim upon which relief may be granted and therefore should be dismissed.

##### **SECOND AFFIRMATIVE DEFENSE**

101. The Plaintiffs' claims are barred by the Doctrine of Estoppel.

##### **THIRD AFFIRMATIVE DEFENSE**

102. The Plaintiffs' claims are barred by the Doctrine of Waiver.

##### **FOURTH AFFIRMATIVE DEFENSE**

103. The Plaintiffs' claims are barred by the Doctrine of Laches.

##### **FIFTH AFFIRMATIVE DEFENSE**

104. The Plaintiffs' claims are barred by the Doctrine of Unclean Hands.

##### **SIXTH AFFIRMATIVE DEFENSE**

105. The Plaintiffs' claims are barred by the Doctrine of Avoidable Consequences.

**SEVENTH AFFIRMATIVE DEFENSE**

106. The Plaintiffs' claims are barred by the applicable Statute of Limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

107. Defendant Travelers reserves the right to rely upon any and all additional defenses as discovery progresses in the within litigation.

**NINETH AFFIRMATIVE DEFENSE**

108. Defendant Travelers reserves the right to rely upon any and all additional defenses available to all co-Defendants to the above-captioned litigation.

**TENTH AFFIRMATIVE DEFENSE**

109. Plaintiffs' claims are barred by virtue of the wording of the Surety Bond, if one applies.

**ELEVENTH AFFIRMATIVE DEFENSE**

110. No actions of Travelers were the cause in fact of any damage allegedly suffered by the Plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE**

111. Plaintiffs' failed to mitigate their damages.

**TWELFTH AFFIRMATIVE DEFENSE**

112. Plaintiffs' failed to adhere to the terms and conditions of the PLA and the PS 14 Affidavit thereby increasing their claims herein to the detriment of Travelers.

WHEREFORE, Defendant Travelers Casualty and Surety Company of America demands judgment dismissing the Complaint, together with costs and disbursements, reasonable attorney's fees and such other and further relief as this Court deems just and proper.

Dated: June 25, 2007

DREIFUSS BONACCI & PARKER, LLP  
*Attorneys for Defendant Travelers Casualty  
and Surety Company of America*

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